

AMENDING AN ACT TO REGULATE COMMERCE.

JANUARY 20, 1897.—Referred to the House Calendar and ordered to be printed.

Mr. SHERMAN, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT.

[To accompany H. R. 10090.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 10022) entitled "An act to amend an act entitled 'An act to regulate commerce,'" having considered the same, report back the accompanying bill as a substitute for said House bill 10022, and recommend its passage by the House:

This bill is limited in its operation to interstate transportation and it has no relation to transportation wholly within any one State.

The first section of the bill requires carriers subject to the act to regulate commerce to provide any agents authorized to sell tickets with a certificate setting forth his authority and it requires the posting of such certificate in a conspicuous place in the office where such business of such agent is conducted.

Section 2 makes it unlawful for any person to sell or transfer tickets or evidence of the right to transportation without the authority provided for in section 1 except a purchaser in good faith of a ticket for personal use.

Section 3 provides that a violation of any of the provisions of sections 1 and 2 shall be a misdemeanor punishable by a fine of not more than \$1,000 or imprisonment not to exceed one year, or both, in the discretion of the court.

Section 4 requires the carriers to redeem unused tickets and provides the procedure for such redemption.

Section 5 provides that the forgery, counterfeiting, altering, or knowingly selling or disposing of such interstate transportation tickets or pass so forged, counterfeited, or altered, shall be punished by fine and imprisonment in the penitentiary for a term not exceeding two years.

As this bill is in direct response to repeated recommendations of the Interstate Commerce Commission, we subjoin hereto references to various annual reports of said commission treating of the subjects provided for in the bill, together with extracts from some of the reports referred to, which, with great force and clearness, set out the necessity for the legislation contemplated in the bill.

As early as 1888, in its second annual report, the Interstate Commerce Commission invited the attention of Congress to the serious evils which resulted from the practices of those engaged in the business of "ticket scalping." Again in 1889, at page 19, of their third annual report, the Commission commented upon the growing boldness and evils of the

practices of "ticket scalpers," and referred to some State legislation which has been enacted in the effort to restrict this irregular business.

In 1890 the Commission, at page 49, of its fourth annual report, stated that—

The subject of brokerage in railroad tickets or "scalping," as it is usually termed, has to some extent been referred to in previous annual reports of the Commission, and has also been commented on more at large in special reports made upon investigations. The last annual report recommended specific legislation by Congress to restrain as far as possible this illegitimate and reprehensible business, now very generally regarded as one of the worst incidental evils connected with transportation.

A bill was introduced in both Houses of Congress at an early period in the last session, embodying the essential features recommended by the Commission. It failed to pass, and, in fact, is believed not to have been reported by the committees of either House.

It is understood that strenuous opposition was made to the passage of the bill by the ticket scalpers of the country. It is believed, upon trustworthy information in possession of the Commission, that railroad managers generally are in favor of efficient legislation for the overthrow of this evil, and that a strong public sentiment exists against its toleration.

With the great increase of railroads and the competition existing among them for patronage, ticket brokerage has become a large business and very profitable to those engaged in it. It is carried on with the greatest amount of boldness and success in the larger cities of the country, where the most eager competition exists between railroads. A few illustrations will serve to show the extent to which the business has been carried.

From various reports received by the Commission it appears that in New York City there exist thirteen scalping offices, in which, including proprietors and clerks, about thirty persons are employed, at an estimated expense for office rent and clerk hire of \$20,000 to \$25,000 a year, and with an estimated annual profit from the business of \$90,000 to \$100,000; that at Chicago there are fifteen scalping offices, whose combined annual expense for rent and clerk hire amounts to about \$70,000; that at Cincinnati there are nine scalping offices, with an annual expense for rent and clerk hire of about \$20,000; and that at Kansas City, there are seven scalping offices, with an estimated annual expense for rent and clerk hire of about \$18,000. When it is considered that this business is carried on in nearly all the principal cities of the country, and that the net profits probably amount to four times the expenditure for carrying it on, it is evident that the profits from this illegitimate business exceed the sum of \$1,000,000 annually.

The ticket broker has no necessary, useful, or legitimate function. He is a self-constituted middleman between the railroad and the passenger. All railroads have accessible and convenient offices and agents for the sale of tickets. The public can be fully accommodated by the regular agencies of the roads without the intervention of superfluous and obtrusive middlemen.

As there could be no field of operation for this class of persons if the railroad companies obtained full established rates for all transportation furnished by them, the expenses of the business and the profits made by those who conduct it must necessarily in the first instance come out of the carriers, and represent simply the discount suffered by them from their established fares and the resulting diminution of revenue. But indirectly this diminution of revenue is made up by the public, for while the business continues the carriers have it in mind in making their rates, and charge higher rates than would be necessary for fairly remunerative revenue if there were no such drain upon them to support the auxiliary force of scalpers.

The business is therefore hurtful both to the roads and to the public in a financial sense, and the extent of the injury it is scarcely possible to measure. The harm done by an army of unscrupulous depredators upon a legitimate business can not be computed by any known standard. Lawless greed recognizes no limits, and weak compliance by its victims only stops at exhaustion. But the moral injury both to railroad officials and to the public is even greater. To railroad officials the business serves as an invitation and an excuse for dishonest practices. It is used as a cover, deceitful and transparent it is true, for evasions of law, and for dishonorable violations of compacts among competing roads to maintain agreed schedules of rates. The public morals are affected by the natural inference that railroad officials are deficient in sense of honor and integrity, and that if the railroad code of ethics permits one road to cheat another it is equally permissible for the public to cheat the railroads. The inevitable tendency of the practice, therefore, is to eliminate the moral element and the rule of action that element inculcates—business honor—from the practical field of transportation.

In whatever aspect ticket scalping may be viewed it is fraudulent alike in its conception and in its operation. The competition of roads affords the opportunity

for the work of the scalper. Without rival roads competing for business he could have no field. The prospect of selling more transportation at a discount than at the established rate, and so diverting business dishonestly from a competitor, is the temptation to a road to let a scalper do for it secretly what it does not dare do openly. The weak excuse of every road that transgresses in this manner is that some competitor does it. Fraud therefore is the incentive to the business, and in its conduct every step is one of actual fraud. The scalper's vocation, the necessity for his occupation, is to sell transportation at less than published and established rates; in other words below lawful charges. Every such sale is a fraud upon the law, a fraud upon competing roads, and a fraud upon the stockholders and the creditors of the road for which the sale is made.

But bad as these transactions are, they are not the worst. There are other branches of the business which we are told by railroad officials are practiced, to their actual knowledge, which are even more culpable. These are said to embrace such acts as dealing in tickets and passes that have been stolen, and tickets that have already been used but not defaced or canceled by conductors, as also in tickets fraudulently altered in respect to dates or extent of journey, and spurious tickets to which the use of some artful device gives the appearance of genuineness. In such cases an imposition is practiced either on a railroad or upon a passenger, certainly upon the latter if the fraud be detected. Whether all or only some brokers engage in these fraudulent practices, or whether the frauds by which stolen, defunct, or altered tickets are palmed off on the public and on the railroads as well, are perpetrated by brokers themselves, or by others acting in collusion with them, are not material. The acts are incidents of the business, and arguments of great potency for legislative action to eradicate the evil.

One might suppose that a practice of this character would no more be defended than larceny or forgery, but a range as it may appear, it is defended before legislative bodies and elsewhere, and the right to carry it on unmolested is demanded. It is urged by way of defense that through the ticket scalper a portion of the public get lower rates, and therefore his operations are in the interests of the public. The circumstance that lower rates so obtained are forbidden by the fundamental principle of the law, that equality of charges for equality of service shall be made, and that such rates are unjust discrimination, is wholly disregarded by this defense.

It is also said that railroad tickets are merchandise, and may be bought at wholesale at any price for which they can be procured, and may be sold at retail for any price the purchaser will pay. This, again, ignores the plain requirements of the law, that a railroad as a public agency must establish and publish its fares and charges, and sell its transportation only at its established rates, and that it is declared a criminal offense to do otherwise. The merchandise theory is an entire perversion of the nature and objects of railroad tickets. A railroad ticket, instead of being merchandise, is in law only a receipt or voucher for the payment of the cost of a journey, and evidence of a contract on the part of the railroad to carry the passenger. It imports that the lawful price of carriage has been paid, and that the holder is entitled to the extent and kind of transportation indicated by the instrument.

If it were practicable fares might be paid on the train, but the use of tickets has been found a great convenience both to railroads and to passengers; especially to railroads in the economy of the time of train agents and as a protection against negligence or dishonesty on the part of such agents. If, in spite of the strong reasons from the railroad standpoint for the use of tickets, they are to be used clandestinely, by the consent of railroads, to violate the law and diminish earnings, it is questionable whether it is important, from the standpoint of the public, whether the scalping is done by professional scalpers or by the direct agents of the road.

Another defense of the business is put on the benevolent ground that passengers holding tickets for a considerable journey often change their minds, or are obliged by some happening to stop short of their destination, or to return without making the whole journey, and that by the charitable interposition of a broker the tickets are taken off their hands at no great loss, whereas otherwise the loss might be considerable. This overlooks the obvious fact that it is quite as convenient for a passenger to have his unused ticket redeemed at the office of a railroad upon which he is traveling as at the office of a broker, and that at a railroad office he can receive the full pro rata value of the unused part of his ticket without losing the broker's profit.

These are, in brief, the grounds upon which ticket brokerage is publicly defended, and which are urged to prevent legislation for the suppression of an acknowledged abuse of large and growing dimensions, seriously injurious in its character, bad in its influence, and owing its existence to the vices of human nature.

The foregoing argument or findings, together with additional reasons, which time and observations had developed, were repeated in the annual report of the Commission for 1895. The necessity for legislation upon this subject induced the Commission to bring the subject to the

attention of the present Congress in their annual report for the year 1896, which they do in the following manner:

In our last annual report we took occasion to comment with some severity upon the unlawful practices of a considerable class of persons who engage in the unauthorized sale of interstate passenger tickets, and who are commonly referred to by the expressive name of "scalpers." What was then said is in part as follows:

"We deem it a special duty to call your attention to the persistent survival and continued increase of the illegitimate business known as ticket brokerage or 'scalping.' So far from showing any signs of diminution it appears to be steadily enlarging in scope and volume. It is impossible to give any reliable estimate of the number of persons who take advantage of this means of procuring unlawful transportation, but it is evident that a considerable percentage of railroad passenger travel is accomplished through the medium of tickets bought at reduced rates of so-called brokers. In every city, and in many of the smaller towns, offices are to be found whose proprietors sell railroad tickets to very many points at less than the published tariffs. The streets are placarded with alluring advertisements, incoming and outgoing travelers are openly solicited, while in hotels and other public places, and not infrequently in regular railroad stations, the runners and agents of these clandestine dealers invoke participation in transportation bargains, which upon their face—to give them no harsher term—are an obvious evasion of the law."

The disregard of law to which we thus referred has apparently continued during the current year and assumed still greater and more serious proportions. This illegitimate traffic has become a positive scandal, and decisive measures should be taken to put an end to these illegal transactions. The remedy for this evil is easily found. A simple enactment would be sufficient, in our judgment, to prevent these abuses and effectually check this species of misconduct. We therefore recommend that it be made a penal offense for any person to engage in the business of selling interstate passenger tickets unless he is an authorized agent of the carrier, duly constituted such by written appointment; and that every such person be required, under appropriate penalty, to expose in his place of business a certificate of his authority.

We also call attention to the fact that extensive frauds upon the public are accomplished by the printing and sale of counterfeit tickets. It has come to our knowledge that hundreds of innocent persons have been victimized by the purchase of spurious tickets from those whose identity could not be clearly established after the fraud was discovered. The actual money loss thus resulting to unsuspecting travelers amounts to a considerable sum, while the distress and annoyance to which innocent and often needy persons have been subjected because they have been induced to purchase these sham tickets can be easier imagined than described. It is a defect in the Federal statutes that the counterfeiting of railroad tickets is not made a criminal offense, and we earnestly recommend the correction of this defect by an appropriate enactment.

As is stated in the closing sentence of that part of the Commission's report above quoted, it is a defect in the Federal statutes that counterfeiting railroad tickets is not made a criminal offense, and section 5 of the bill corrects that defect. To falsely counterfeit a railroad ticket is as serious a crime, and should be so made by statute, as to counterfeit anything else. It so happens that such counterfeited ticket is most apt to fall into the hands of an innocent purchaser and one not usually accustomed to travel. So that is not merely a question of defrauding the railroad company, for when the fraud is detected by a conductor such ticket can not be accepted by him, and the frequently innocent purchaser—one who, not unlikely, has given most of his money for the purchase thereof—must be ejected from the train. This section 5, therefore, is designed, as is the entire bill, for the protection of the traveling public. Prior to the introduction of the original measure, No. 10022, it was submitted by a member of this committee to the Interstate Commerce Commission and met their approval, and under date of January 18th the Hon. Martin A. Knapp, one of the Interstate Commerce Commissioners, wrote the following:

INTERSTATE COMMERCE COMMISSION,
Washington, January 18, 1897.

MY DEAR SHERMAN: I write to make a suggestion in reference to the bill to prevent ticket scalping.

It has been the custom of your committee to refer all such bills to this Commission

for a report as to their merits and the propriety of their passage. It may not be necessary to take that course in this case, inasmuch as this bill is in undoubted and full conformity with the specific recommendations of the Commission in its last two annual reports.

* * * * *

I am sure the Commission will be entirely satisfied to have your committee act at once without calling upon us for a further and formal expression of opinion.

Yours, very truly,

MARTIN A. KNAPP.

HON. JAMES S. SHERMAN,
House of Representatives, Washington, D. C.

Your committee, in view of the above, recommend the passage of the bill which is herewith presented by them as a substitute.

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AMENDING ACT TO REGULATE COMMERCE.

JANUARY 29, 1897.—Referred to the House Calendar and ordered to be printed.

Mr. ELLETT, from the Committee on Interstate and Foreign Commerce,
submitted the following as the

VIEWS OF THE MINORITY.

[To accompany H. R. 10090.]

The report of the majority of the committee should not be adopted for the following reasons:

First. The committee has had no information upon the subject except that which comes from the published reports of the Interstate Commerce Commission, which show that they are based on reports received from railroad officials who are interested parties. The representatives of ticket brokerage, which this bill proposes to destroy, have been given no opportunity of a hearing either before the Interstate Commerce Commission in reply or before the Committee on Interstate and Foreign Commerce.

Second. The bill would destroy a business of thirty years' standing, which is in the interest of the public in that it promotes healthy competition in passenger traffic and prevents the carrying out of illegal compacts.

Third. By the destruction of the business named the public would be compelled to pay higher rates for passenger fares without receiving a benefit in return for this deprivation.

This bill provides that no one shall have authority to sell interstate railway tickets except that a certificate indicating the same has been furnished by the carrier. The second section makes it unlawful for any person to sell or transfer a ticket unless he holds such certificate. It is provided, however, that the provisions of this act shall not apply to the purchaser of a ticket in good faith for personal use in the prosecution of a journey.

Section 3 provides a penalty for violation of either of the preceding sections in the nature of a fine not exceeding \$1,000 or imprisonment for a term not exceeding one year, or both, at the discretion of the court.

The last clause of the second section clearly indicates that it is contemplated that the sale of a ticket, other than by an authorized agent of the railway company, is not a moral offense for the reason that some persons are authorized to sell same without such certificate, while others are not. It is evident from this that the intent of the bill is to destroy ticket brokerage, a business which has existed for thirty years and has been the only source of relief to the public from excessive rates. Various combinations have been formed among the strong lines from time to time, into which the weaker lines have been forced through fear of a withdrawal of business relations by their natural connections. The only impediment to the complete enforcement of such

arbitrary rules, and the only relief to the people, has been the business which this bill would destroy. Investigation shows that rates on file with the Interstate Commerce Commission are uniformly made, first by the traffic association, embracing many or all of the lines in a given territory, and are then filed with the Commission, which so far seems to have failed to criticise such rates. It should be clearly understood that these rates should not be considered as lawful, for the reason that there is no legality in their formation, each company being bound to the others under severe penalties for the rigid observance of the same before they are filed.

The majority report contains a portion of the report of the Commission for 1890. Attention is called herein to some of the statements made.

It is believed, upon trustworthy information in possession of the Commission, that railroad managers generally are in favor of efficient legislation for the overthrow of this evil, and that a strong public sentiment exists against its toleration.

As to the first proposition there can be no doubt, so far as concerns managers of the strong lines, whose revenues are somewhat impaired by the fact that ticket brokers' affiliations are more directly with the weaker lines, who are dependent upon them for business. As to the second proposition no evidence has been discovered to support it.

In another paragraph the following is found:

It is carried on with the greatest amount of boldness and success in the larger cities of the country, where the most eager competition exists between railroads.

It certainly should not be the policy of the Government, through an act of this character, to deprive the people of the benefit of such competition.

There is nothing in the interstate-commerce law which contemplates an agreement between rival lines for the maintenance of rates. Each line should certainly be at liberty to file its own tariff rate sheet.

The immediate effect of this bill would be an encouragement to rival interests to maintain such agreements and to eliminate the element of competition. The business certainly could not have grown and flourished and sustained itself in popular opinion, as indicated by the report of the Commission, did it not have merit. It should be borne in mind that to destroy the business of ticket brokerage would be to deprive weaker lines of railway from the privilege of giving to the public rates which they are perfectly willing to accord through this system, and to which they offer no objection, and which they do not dare to name in the published tariffs, because they are forced into the traffic association. With such associations dissolved, leaving each line free to give to the people the benefit of a natural and healthy competition, such as is required in other kinds of business, and should the strong lines accord to the weaker lines the privilege of making lower rates on account of inferiority in service, the function of the ticket broker would disappear and he would necessarily cease to exist, because his business would be unprofitable. It grew out of discrimination against localities and against certain railway lines. It was built up and has existed purely from and through that cause. When the cause is removed, either naturally or through legislation, the business of ticket brokerage will disappear. Did the Government establish rates the situation would be entirely different, but such is not the case.

There seems to be no evidence to sustain the charge of the Commission that frauds and forgeries are perpetrated in the business of ticket brokerage. Granting, even, that such may be the case to some extent,

the courts are open for the prosecution of offenders, as in all other kinds of business.

Section 5 provides a penalty for forging and counterfeiting railroad tickets, to which certainly no one can object.

We find that the business of ticket brokerage tends to prevent the very discriminations against persons and localities which prompted the framing of the interstate-commerce law, with which it seems to be in entire harmony. Our investigation leads us to think that should this bill become a law, it would at once result in the raising of rates to all intermediate and noncompetitive points, and would tend toward the absorption of the weaker lines by the stronger.

All of which is respectfully submitted.

TAZEWELL ELLETT.

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TICKET BROKERAGE.

FEBRUARY 13, 1897.—Referred to the House Calendar and ordered to be printed.

Mr. ELLETT, from the Committee on Interstate and Foreign Commerce, submitted the following

SUPPLEMENTAL VIEWS.

[To accompany H. R. 10090.]

It is with great reluctance that I presume to differ with the Interstate Commerce Commission and my colleagues of the Committee of Interstate and Foreign Commerce. I have always made it a rule to concur with the majority of the committee when I differed with it in minor details or nonessentials, but when I differ on what I consider to be some essential principle of equity or justice, it is my duty as a Representative to do all in my power to sustain what I deem the right and vigorously oppose the wrong. Hence the minority views set forth by myself in opposition to House bill No. 10090.

The reasons why I do not think this bill should become a law are as follows, viz:

First. The restraints and prohibitions which this act seeks to impose upon the right of a holder of a railroad ticket to sell or transfer it for a consideration are not valid.

An ordinary railroad ticket purports upon its face to be good in the hands of the holder. The original purchaser may never use it, but one of the essential qualities of the ticket which he has bought is its transferability. This quality is part of the consideration of his purchase. Hence the recognized legal right of the purchaser who has paid value for the ticket which he holds, to sell it for value. It may be bought and sold as freely as any other chattel or evidence of right which passes by delivery. Owing to a variety of causes, a lawful traffic has sprung up in this article of recognized and known value—and in all large cities—where the buyer and seller call in the aid of the broker, in dealing in almost every article of traffic, the holder will always find a market for his unused ticket at the office of the ticket broker. The farmer who sells his grain upon the market, the corporation that issues its stock, and the railroad company who sells its ticket entitling the holder to a passage, each transfers to the purchaser a species of property, with the right impressed upon it to dispose of it to anyone for whatever he pleases.

"The third absolute right of every Englishman," says Blackstone, "is that of property, which consists in the free enjoyment *and disposal* of all his acquirements without control or diminution *save by the laws of the land.*" And Chancellor Kent says, "the exclusive right of using and transferring property follows as a natural consequence from the perception and admission of the right itself. * * * *The power of alienation of property is a necessary incident to the right.*"

Transferability and value can not, therefore, be taken from the owner of a ticket by an act of Congress unless the expressions "the law of the land," and "due process of law," mean, among other things, an act of Congress.

Judge Comstock says in *Wynehamer v. The People* (13 N. Y., 392): "To say, as has been suggested, that 'the law of the land,' or 'due process of law' may mean every act of the legislature which deprives the citizen of his rights, privileges, and property leads to a simple absurdity. The Constitution would then mean that no person shall be deprived of his property or rights unless the legislature shall pass a law to effectuate the wrong, and this would be throwing the restraint entirely away;" and Chancellor Kent says (2 Com., 13), "The better and larger definition of due process of law is that it means law in its regular course of administration through courts of justice."

Suppose the farmer procures the passage of a law that all products of the farm sold and not eaten by the purchaser shall be returned to him for redemption at cost price, a parallel absurdity would be presented. Are the restraints and prohibitions which this act seeks to impose upon the right of the holder of a railroad ticket to sell or transfer it for a consideration valid? One of the fundamental limitations upon the power of Congress is that which provides that the citizen "shall not be deprived of his property without due process of law." It is well settled that an act of Congress is not "due process of law." (See Amendts. Const., Art. V.)

"Property," within the meaning of this provision, is "everything which has an exchangeable value." (Swayne, J., 16 Wall., 127.) The right of property has been defined as "the exclusive right of using and disposing of a thing as one's own." (Bouvier's L. Dict., vol. 2, 346.) Its "free use, enjoyment, and disposal." (Blackstone's Com., vol. 1, 138.)

"The power of alienation," says Chancellor Kent (Kent's Com., vol. 2, 310), "is a necessary incident to the right." An examination of the provisions of this act will show that in a majority of cases it is substantially destructive of this "right of alienation." The right of property must embrace not only the thing itself, but its ordinary and essential characteristics, of which the power of sale is one. The protection of property must necessarily extend to that essential and valuable right, and every law which makes it criminal for him to exercise that right deprives him of his property "without due process of law."

It is difficult to distinguish such a law from a law which would prohibit the buyer of a barrel of flour from selling it to anyone but the manufacturer, and everyone from selling it but the manufacturer's agent. If it is in the power of Congress to retain for the railroad company by penal statute the control of and exclusive right to repurchase the transferable ticket which it has issued, it would seem to be in its power to extend the same protection to each peculiar interest, and thus bind the hands of the citizen in the interest of every monopoly.

Second. This act confiscates the property of the citizen without just compensation.

"Congress in exercising supreme control over the regulation of commerce can take private property only on payment of just compensation." (Monongahela Navigation Co. v. U. S., 148, U. S., 312.)

Any law which prohibits the citizen from engaging in a lawful occupation is invalid.

This act does prohibit anyone from engaging in an occupation which, in my judgment, is a lawful one. It not only prohibits citizens from engaging in that occupation in the future, but deprives those who have

already engaged in it of their chosen means of livelihood. Because these tickets are transferable and the proper subjects of purchase and sale, and owing to the differences in rates which railroads have established at different points, charging at one point one price and at another another price, for traveling the same distance, a regular traffic in them has grown up.

In all our large cities there are firms engaged in buying and selling railroad tickets as a regular occupation. They have offices and have invested their means in a stock in trade. They have acquired whatever special knowledge is necessary for its successful prosecution. Their business is open and their places of business are known to the traveling public. For years past the business has been as much the chosen occupation of a class of citizens as the business of buying and selling grain or any other merchantable commodity. There has been nothing hitherto in the nature of the business which has made it contrary to law. Those engaged in it buy and sell an article which is in its nature a lawful subject of purchase and sale. Their business is a lawful one. The effect of this law is to prohibit it. All citizens are forbidden by law from engaging in it, and those who have chosen it as an occupation, if they obey this law, will be compelled to abandon it.

The right to pursue a lawful occupation is a fundamental right of the citizen. If a constitutional guarantee were needed for its protection, it is found in that provision of the bill of rights which guarantees to him "life, liberty, and the pursuit of happiness."

The theory upon which political institutions rest is that all men have certain inalienable rights; that among these are life, liberty, and the pursuit of happiness, and that in the pursuit of happiness all avocations, all honors, all positions are alike open to everyone. (*Cummings v. State*, 4 Wall., 321.)

"There is no more sacred right of citizenship," says Justice Bradley, "than the right to pursue unmolested a lawful employment in a lawful manner. It is nothing more nor less than the sacred right of labor." (*Live Stock Assn. v. Crescent City*, 1 Abb. U. S. R., 398.) And in the famous *Slaughter House* cases (16 Wall., 122) it is decided that "A law which prohibits a large class of citizens from adopting a lawful employment or from following a lawful employment previously adopted does deprive them of liberty as well as property without due process of law. Their right of choice is a portion of their liberty; their occupation is their property."

In *Arrowsmith v. Burlington* (4 McLean, 497), the court says "A freeman may buy and sell at his pleasure. This right is not of society, but from nature. He never gave it up."

Third. The right of every citizen to pursue a lawful occupation is guaranteed to him by the fundamental law.

There is no right so essential to his happiness, or so intimately connected with the enjoyment of the property which he may acquire. If Congress can constitutionally prohibit him from carrying on the business of buying and selling railroad tickets, it can prohibit him from buying and selling grain, stocks, provisions, or any other article of trade. So long as he carries on his business by honest and fair means, it is as much entitled to the protection of the law as any other lawful occupation.

There is undoubtedly vested in the legislatures of the States an undefined power known as the police power, which extends to all regulations effecting the *health, good order, or morals of society*.

It is, however, well settled that the legislative power can not give

to an act the character of a police regulation by calling it such. The law must relate to a subject which is the proper subject of police regulation. The legislative branch of the Government can not, under pretense of police regulations, encroach on the rights of the citizen.

It has been claimed by the promoters of this bill that it was designed to prevent fraud upon travelers by persons falsely representing themselves as the agents of railroads. But such is not the design or scope of the act. If it prohibited such false representations and provided for their punishment it would be a legislative exercise of police power. Instead, however, of providing for the punishment of those who make use of fraudulent methods of carrying on the business, it prohibits the business itself.

The fact that misrepresentation can be made use of in buying and selling an article is no justification for a law which prohibits its purchase and sale altogether.

But enough as to the law—now let us look to the facts relating to this proposed bill.

The facts clearly establish that a large majority of the people are benefited by and therefore favor the ticket brokerage business, as the people secure cheaper tickets through the people's agents—the ticket brokers. The only interests benefited being the amalgamated railroad systems, who desire to monopolize the entire railroad business of the country; therefore, it is a case of the people versus these strong lines.

Not all railroads favor this bill. Weaker and independent lines know that ticket brokerage alone saves them from the three powerful passenger associations or trusts, and the bankruptcy and final absorption which would follow if they were absolutely under the dictation of these associations. This check upon the concentration of all the railroads of the country in a few hands is one of the greatest benefits derived by the people through ticket brokerage. A striking illustration of this is when weaker lines are boycotted by order of the associations. But for ticket brokerage the weaker lines would get no through passengers and would consequently have to stop their trains. In all such cases the interests of the broker and the people carry them to the support of the boycotted line and enable it to successfully resist the boycott.

Another valuable consideration to the public is the unsurpassed convenience and generality of information the many brokers' offices throughout the country afford the traveling public. I knew a business man to be in New York with a return Baltimore and Ohio coupon to Washington. He suddenly had a call farther South, and learning that the Baltimore and Ohio train would not make connection with the Atlantic Coast Line, he went to a broker, paid him 50 cents and procured a ticket over the Pennsylvania road, made direct connection, saved six hours and thirty-five minutes in reaching his destination, besides considerable living expense had he been forced to wait in New York City. Did the Baltimore and Ohio lose anything? Did the Pennsylvania lose anything? No. The broker made 50 cents out of the passenger, and the passenger saved many times this in expense and six hours and thirty-five minutes, and boasted of the convenience and profit the broker had been to him. How many just such cases do you suppose occur daily in the great city of New York alone? It would be unreasonable to doubt that the other great cities of the country would daily run such examples up into the thousands, saving to business men many valuable hours besides money.

One of the greatest benefits to the traveling public is the quickness and ease with which the information is acquired from brokers respecting the various routes through any section of the country. The infor-

mation obtained from the broker of the advantages and disadvantages of the various routes could not be had except by personal solicitation at the local office of each company. And even in this case the passenger talks with a decidedly interested party, and is not liable to be as fairly, frankly, and fully advised as he would be by a broker.

When a passenger buys a ticket what does he buy? Surely not the paper or pasteboard. He receives nothing for his money until he has been given the service by the company which the ticket promises. To prohibit the transfer of this service when it is ascertained by the purchaser that he can not personally use it is as unjust as to decree that a man shall not sell a coat that does not fit him simply because he designed to wear it when he ordered it. How is it unfair, unjust, or unprofitable to the railroad company? They have received all they asked to perform the service—every dollar. Does it cost them any more to haul one man than another? If they were in any way required to receive less than they offered to perform the service for, then their complaint would at least be clothed in reason and deserve some consideration. But they come confessing, by the possession of the tickets by the public, the receipt of their own fixed consideration, and ask legislation to impose hardship or loss upon the purchaser that their revenues may be enlarged by not rendering to someone the service for which they have been paid. Well they know that in commercial America, where the telegraph so readily advises business men of the necessities of trade, that some great portion of the commercial army is hourly directed to change its line of march, and if they can by these changes secure what the business world now saves to itself through the brokers, their coffers would swell immensely.

It would not be attempted but that they know the business of the country must be prosecuted even if at increased cost. One would suppose that owing to the increased freight traffic resulting from the labors of the traveling man that the railroads would be disposed to decrease his personal expenses. But such is not so. They are endeavoring to increase the expense rather than diminish it by depriving him of the privileges he now enjoys through the ticket broker.

The chief plea of those advocating this measure is the counterfeiting and forging of tickets, and the dishonesty of some brokers. As to the first, everyone desires that the crime of counterfeiting and forging shall be suppressed. For myself, I would prefer to leave it to the States to punish such crimes within their borders, but if their laws are not sufficiently clear and comprehensive, I would gladly welcome a law of Congress punishing the counterfeiting and forging of interstate tickets. The chairman of the executive committee of the Ticket Brokers' Association stated in a hearing upon this bill before the Senate committee a few days since, that the brokers would rejoice in the passage of such a law. As to the dishonesty of the brokers, every investigation has shown and will show that they are as honest as any other class of American citizens. And the absurdity of proposing to prohibit any pursuit, because some who follow it are dishonest can not be more strikingly illustrated than by the railroad business itself.

Gentlemen on the other side admit that some railroad officials are dishonest. Would they remedy this by abolishing the railroad business? Or will the abolition of ticket brokerage make all railroad officials honest? On the contrary, it would be impossible to devise a system that would furnish greater facilities for fraud than this bill places at the disposal of the authorized ticket agent. To illustrate: The rate from Chicago to New York, via Washington, is \$18; the rate

from Chicago to Washington is \$17.50, and from Washington to New York is \$6.50. If you deprive the people of the ticket broker, to whom they can always readily dispose of the unused portion of tickets, you force them to sell these unused tickets at less than value to the so-called "authorized agent." Now what is to prevent this "authorized agent" from paying the 50 cents for the redemption of the ticket on his own account and selling it at what he pleases and putting the amount into his pocket? It is evident that the object of the bill is to secure to the great railroad systems the sums the traveling public now save through the broker; but as for correcting fraud, I have shown that it tends to increase it by offering additional temptation.

In justice to the brokers, it should be stated that their association protects the innocent and unwary traveler for whom the railroads and Interstate Commerce Commission seem to have such great solicitude, by paying the traveler for all illegal tickets sold him by one of its members, and expelling the offending member.

No one is more in sympathy with the purposes of the interstate-commerce law than myself. Its primary object was to prevent discrimination in freight and passenger rates, and, as understood, the Interstate Commerce Commission was created to enforce this as far as it laid in the power of Congress to do so.

I do not wish or intend to reflect on the honest purpose of the Commission, but in so far as the ticket broker is concerned they seemed to have lost sight of the purpose of the law and the object of their creation, for everyone knows that if the railroads would stop discrimination the ticket brokers' business would be at an end. No statute is necessary, but the simple cooperation of the railroads in the original purposes of the Interstate Commission law. But the Interstate Commerce Commission seem to have overlooked this fact, and it is but natural that they should have done so, as they have, from their own reports, clearly been guilty of the unjust and unamerican course of securing all of their information from the railroad associations and of having failed to accord a hearing to the representatives of the Ticket Brokers' Association, though they have severely criticised and stigmatized them as criminals, annually, in each of their reports, since 1890. And this, though the brokers have frequently requested to be heard.

The duties of the Interstate Commerce Commission are quasi judicial, and what greater outrage to the American sentiment of fair play and the fundamental principle of constitutional liberty could be pictured than for an American court to pass criminal sentence upon a citizen without informing him of the nature of the charge against him; without confronting him with his accusers and the witnesses against him, and without giving him an opportunity to be heard in his own behalf?

In conclusion, I submit to this House that had the Interstate Commerce Commission made an investigation of this matter they would never have stated that there was a popular demand for the enactment of this law. But they would have known the following facts: That twenty-four State legislatures and three successive Congresses have dropped this identical bill into the waste basket; that a hundred thousand traveling salesmen, who are the most expert and experienced travelers in America, and who should know what is to their interest, are knocking at the doors of Congress, through their associations, requesting that this bill be defeated; that manufacturers and merchants all over the land, who know their business interests, have united in this request. And they would have concluded that the people, and

especially the medium-rich and the poor, who constitute the large majority, are opposed to and not in favor of this bill. And they would have recognized the most important fact of all, that the ticket broker was a public benefactor rather than a public nuisance, and the sole parties to be benefited by such a law were those powerful railway systems of the country who expect by such legislation so much the sooner to absorb all the systems of the land practically into one grand monopoly.

Respectfully submitted.

TAZEWELL ELLETT.

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